* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ Criminal Revision No. 208/2006 Reserved on : July 30, 2007
Date of decision: 16th August, 2007

DR. ANIL KHETRAPAL ..... Petitioner
Through Ms. Rebecca John, Advocate

versus

THE STATE (GOVT. OF NCT) ..... Respondent
Through Mr. Pawan Sharma, APP

CORAM:

Mr. Justice S. Ravindra Bhat

. Whether reporters of local papers may be allowed to see the judgment.? Yes

. To be referred to the Reporter or not? Yes

. Whether the judgment should be reported in the Digest? Yes

Mr. Justice S. Ravindra Bhat:

1. The present revision petition challenges an order on charge dated 10.02.2006 passed by the learned Additional Sessions Judge (ASJ). The Petitioner stands charged for committing offences punishable under section 306/385/120 B of the Indian Penal Code (IPC).

2. The petitioner is a doctor by profession; he is an endoscopic and laparoscopic surgeon. He owns a clinic cum hospital, called the "Khetrapal

Hospital" situated at Bali Nagar, New Delhi. A first information report (FIR) dated 24.08.2005 was lodged against him for committing the offences under Section 306/387/385 120B of IPC. This arose due to an incident which allegedly occurred on 07.08.2005, when one Shri. H.S. Gill (hereafter "the deceased") committed suicide by hanging in a hotel in Mahipalpur, New Delhi. A suicide note was recovered from the spot. At that time, neither the wife of the deceased nor his relatives levelled any allegations against anybody with regard to the suicide on the date of the incident.

3. It was alleged in the suicide note that the deceased knew one Smt. Neerja Sharma. The lady had approached him to discuss her electricity problem; she was referred to him by a police officer. She allegedly won the trust of the deceased and his family and later on started revealing her intentions. It is alleged that Sh. R.P. Sharma, ACP threatened the deceased to marry her. Both Ms. Neerja Sharma and Shri R.P. Sharma had also threatened the deceased that if he failed to marry her, they would implicate him in a false case of abetment of suicide.

4. It was further stated in the suicide note that on 30.07.2005 Shri. R.P Sharma rung up the deceased and had informed him that Smt. Neerja had consumed poison. In the evening, the present petitioner allegedly called up the deceased to inform him that Smt. Neerja consumed poison and that she was admitted in his hospital; since she had given him only the deceased's number, he advised him to

meet the lady.

5. The suicide note alleged that the deceased and his wife went to the hospital to meet the lady, but the petitioner did not allow the couple to meet her that day on the pretext that her condition would deteriorate. On 2nd July, 2005 allegedly the petitioner called up the deceased and asked him to meet Smt. Neerja Sharma, and there the deceased was asked to marry the lady within half an hour. The deceased however refused the suggestion. It was further alleged that on the 1st of August 2005, Sh. R.R. Sharma and one Sh. Dharambir asked the deceased to marry the lady otherwise they threatened to approach the media.

6. The deceased allegedly approached the Commissioner of police on 1st July 2005 to lodge a complaint against the lady. Instead, he was shocked to learn that she had filed a report with the Model town Police station on 31.07.2005 alleging that she along with Sh. R.R. Sharma had visited the deceased and there the deceased gave her poison.The deceased alleged that on 04.07.2005 he met up Smt. Neerja Sharma who wanted him to either marry her or legally adopt her as his daughter. Apart from the suicide note a complaint dated 01.08.2005 was allegedly recovered from the spot which contained similar allegations. It too stated that after receiving a call from the petitioner on 30.07.2005, the deceased and his wife went to meet the lady but the petitioner did not allow them to meet her stating that the

lady was angry with the deceased and was leveling charges against him. The deceased allegedly tried contacting the petitioner again, but could not get through. The next day i.e. on 31.07.2005, deceased allegedly called up the petitioner. His assistant attended the call and stated that the lady was getting discharged from the hospital on that day. The deceased was told that he could take her from the hospital. The deceased once again tried contacting the petitioner, but could not get through. About this time Sh. R.R. Sharma extended threats to the deceased.

7. The deceased had blamed Smt. Neerja Sharma, Sh. R.R. Sharma, ACP and the petitioner for his suicide. It is alleged that after more than two weeks after the incident i.e. on 24.08.2005 an FIR was registered under 306/385/387/34 IPC and the petitioner was also arrayed as an accused.

8. Learned counsel for the petitioner Ms. Rebecca John contended that the suicide note clearly revealed that the petitioner made two phone calls to the deceased to inform about the condition of Smt. Neerja Sharma. The learned counsel submitted that this was done in his capacity as a doctor. Learned counsel further submitted that except for a mere allegation in the suicide note and the complaint dated 01.08.2005 that the petitioner had made two phone calls to the deceased requesting him to visit Smt. Neerja Sharma at his hospital, there was no material on record to remotely suggest that he had either instigated or abetted the co-accused in driving the deceased to commit suicide.

9. The learned counsel further urged that the deceased met the co-accused in the hospital on 30.07.2005 and later committed suicide on 07.08.2005, there was ample time available to him to think the matter over. Therefore it could be inferred that the visit of the deceased to the hospital on 30.07.2005 drove him to commit suicide on 07.08.2005. The learned counsel next submitted that Smt. Neerja Sharma was not admitted to Khetrapal Hospital on 30.07.05; she had only consulted Dr. Shashi Bhusan, the psychiatrist attached to the hospital who recorded his statement. This shows that she had consulted the doctor for mild depression and she was on medication. The learned counsel submitted that no role could be attributed to the petitioner after 02.08.2005 and the suicide note left behind does not make out a case for any conspiracy. She also relied upon the CFSL report of Smt. Neerja Sharma which did not establish that any substance causing uneasiness to her was present in her stomach.

10. Learned counsel further submitted that the trial court relied upon the statement of the deceased's wife which was recorded a month after the incident i.e. on 11.09.2005; there is no explanation to the delay in giving the statement when she was aware of all the facts. The deceased's wife alleged in her statement that the accused hatched a conspiracy to extort a sum of Rs.40 lakhs or property from the deceased, failing which he would be implicated in false criminal cases. Her statement is neither supported by the deceased's suicide note nor the complaint

dated 01.08.2005; in such circumstance, reliance cannot be placed upon the wife's version.

11. Learned counsel for the petitioner relied on *Mahendra Singh and Anr. Vs. State of Madhya Pradesh* reported as 1996 Crl. L.J 894 in which the Supreme Court observed that under similar circumstances merely on allegation of harassment made by the deceased the office under section 306 of IPC could not be held sustainable. The learned counsel has also relied on *"Paramhans Yadav Vs. State* reported as AIR 1987 SC 955" in which the Supreme Court observe that

> *" It is difficult to support the charge of conspiracy with direct evidence in every case but if the prosecution relies upon circumstantial evidence, a clear link has to be established and the chain has to be completed, otherwise it would be hazardous to accept a part of the link as a complete one and on the basis of such incomplete evidence, the conspiracy cannot be accepted".*

The learned counsel further relied upon *Sanjay Singh Sengar Vs. State of Madhya Pradesh*, reported as 2002 (2) JCC 847 in which the Court held that :

> *" in a much graver circumstances the alleged abusive words were said to have been told to the deceased two days prior to his death by hanging. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and therefore it could not be said that the abusive language used by the accused drove the deceased to commit suicide".*

The learned counsel submitted that by applying the above-mentioned ratio of law to the facts of the present case, it is clear that no charge of abetment to suicide or

any other offence is maintainable against the petitioner.

12. Counsel submitted that there was no role attributed to the petitioner after 02.08.2005 and the suicide note left behind does not make out any conspiracy by the Petitioner in abetting the suicide of the deceased. The learned counsel further submitted that the petitioner is a heart patient and has undergone a surgery and he is in need of medical attention.

13. The learned Additional Public Prosecutor submitted that there were sufficient materials on record pointing to the complicity of the petitioner. The deceased became fearful by threats from the co-accused; the petitioner co-operated and conspired with her. Ms. Neerja Sharma was never admitted in hospital; she was suffering from depression. The petitioner was aware of this; yet he was part of the conspiracy to put mental pressure on the deceased, which led to his committing suicide.

14. The trial court charged the petitioner under Section 306/385/120B of IPC. The extracts of the order dated 10.02.2006 are as follows :

> "*Dr. Khetrapal has also acted and participated therein according to the suicidal note and the other evidence available on record. They were also regularly in touch with the deceased and each other and pressurized him. The wife of the deceased has stated in her statement that all these three accused person have conspired with each other and has extorted Rs.40 lakhs by putting the deceased to threat and false implication. From all these facts I am of the opinion that prima facie a case of conspiracy and*

abetment to suicide and extortion is made out. It is ordered that charges for the offence punishable U/s 120B IPC, 306 read with Sec. 120B IPC and 385 read with Sec. 120B IPC are framed. Accused persons plead not guilty and claimed trial.

There is nothing on record that Sh. H.S. Gill was put to fear of death and of grievous hurt, therefore, the accused persons are discharged for the offence punishable u/s 387 read with sec. 120B".

15. The materials before the trial court included not only the suicide note, allegedly written by the deceased, but also the complaint written on 1-8-2005 to the police authorities. A statement of Dr. Shashi Bhushan Kumar, under Section 161, Cr. PC. is to the effect that Ms. Neerja Sharma was suffering from mild depression and anxiety; she was however not admitted. The charge sheet alleged that the casualty register contained no entry about admission of the lady. Likewise, no receipt towards charges of admission and consultation were found. The telephone number used by the petitioner from which he called the deceased, is also revealed in the charge sheet. Initially, he evaded and did not join investigation; later, after his interrogation, he was arrested. His telephone was recovered. The telephone records were also obtained.

16. As regards the contention that the offence of abetment could not have been made out on the materials available till now, no doubt the law is that there has to be an intention or *mens rea,* on the part of the accused to bring home the charge.

As to whether the contents of the suicide note relied upon, or the materials collected during course of the investigation are sufficient or otherwise, are matters of trial. The probative value of the documents, on record, the statements to be recorded and the case which would eventually be revealed, at this stage are matters of speculation. They may or may not be sufficient to convict the petitioner; but this cannot court draw conclusions, on such speculations. I am satisfied, from the impugned order, that materials existed to proceed in the manner the trial court did. There are *prima facie* materials to hold that grave suspicion about involvement of the petitioner in the alleged crime existed, to justify framing the charges.

17. In view of the above conclusions, the impugned order does not suffer from any legal impropriety or infirmity. The present revision is therefore dismissed as meritless. No costs.

(S. RAVINDRA BHAT)
JUDGE

August 16th, 2007